GOV. LEEDY'S VETO.

RAILROAD BILL RETURNED WITHOUT EXECUTIVE APPROVAL.

SIX OBJECTIONS SET FORTH.

PRINCIPAL ONE IS THAT IT OFFERS NO RELIEF TO SHIPPERS.

No Improvement Over Present Laws—Attempt to Override the Veto Fails—Special Session in April to Pass a Railroad Law.

Topeka, Kas., March 9.—(Special.) As foreshadowed in this morning's Journal, Governor Leedy to-day vetoed the railroad bill and sent a message to the legislature giving his reasons therefor, together with some suggestions as to what kind of a bill should be passed. No effort will be made at this session to enact a railroad law. Governor Leedy doesn't want it. He has advised that all efforts in that direction be abandonment. His plan is to call a special session the latter part of April and try again to enact a maximum freight rate law. He has two objects in view in not wanting to push a bill at this session. The first is because he is afraid that such a measure will not command the necessary number of votes; the second that he is fearful that if a bill to his liking could be passed, some provisions might accidentally creep into it that would render it inoperative.

The governor thinks that through a system of Populist revival meetings which he will have the pie-hunters work up, some of the Populists who now oppose a maximum rate bill can be converted. Then, when the special session convenes they will vote as Leedy thinks best.

As soon as the veto message was read to-day, the advocates of a maximum bill began rounding up the members. It soon developed that the senate would be the stickler. A thorough canvass was made and it is said four converts were discovered. This would make the strength of the maximum crowd just nineteen, two less than is absolutely necessary to pass a bill. Those two votes could not be raked up anywhere. Threats were being made to revive the maximum bill, but the governor urged those having the matter in charge to close operations.

The veto message was read in the house early this afternoon. A vote was then taken and the veto was sustained. It required eighty-five votes to pass the bill,and it received only sixty-one. There were fifty-six votes cast against it.

Those voting to pass the bill over the governor's veto were: Aker (Rep.), Armstrong (Dem.), Bacon (Rep.),Barker (Rep.), Basgall (Dem.), Botkin (Rep.), Bennett, (Rep.), Brooke (Rep.), Brown of Cowley (Silver Rep.), Brown of Greeley (Rep.), Buell (Rep.), Burkholder (Rep.), Burtis (Rep.), Conger (Pop.), Cubbison (Rep.), Dewitt (Rep.), Doyle (Silver Rep.), Ernst (Pop.), Finney (Rep.), Fitzgerald (Rep.), Fouts (Rep.), Giesler (Rep.), Graves (Pop.), Grimes (Rep.), Hackbusch (Rep.), Haywood (Rep.), Heckman (Rep.), Heminger (Rep.), Henley (Rep.), Hollembeak (Rep.), Irwin (Rep.), Jackson of Comanche (Rep.), Jackson of Harvey (Rep.), Johnson of Chase (Pop.), Johnson of Labette, (Pop.), Johnson of Nemaha (Rep.), Jones (Pop.), Keddie (Rep.), Lambert of Lyon (Rep.), Larimer (Rep.), Lobdell (Rep.), Longley (Rep.), McCarthy (Rep.), McKeever (Rep.), Moore (Rep.), Montgomery (Pop.), Palenske (Dem.), Perry (Rep.), Polson (Rep.), Reed (Rep.), Seaton (Rep.), Seaver (Rep.), Shouse (Rep.), Smith of Brown (Rep.), Smith of Sherman (Pop.), Taylor (Pop.), Ury (Rep.), Vogelesang (Rep.), Waters (Dem.), Williams (Silver Rep.).

Those voting against the bill or to sustain the veto were: Barkley (Pop.); Bean, (Pop.); Brown of Pratt (Pop.), Carr (Pop.), Cassin (Pop.), Clark (Pop), Crosby (Pop.), Davis (Pop.), Dingus (Pop.), Epperson (Pop.), Fairchild (Pop.), Farrell (Pop.), Feighner (Pop.), Feil (Pop.), Foley (Pop.), Fulton (Pop.), Hackney (Dem.), Harbaugh (Pop.), Harvey (Pop.), Hibner (Pop.), Ingle (Pop.), Jamieson (Pop.), Jaquins (Pop.), Keefer (Pop.), Kelson (Pop.), Lambert of Lincoln (Pop.), Lawson (Pop.), Lewis (Pop.), Loomis (Pop.), Malin (Pop.), Marty (Pop.), McGrath (Pop.), Merrill (Pop.), Metzler (Pop.), Mott (Pop.), Muenzenmayer (Pop.), Outcalt (Pop.), Patton (Pop.), Ravenscraft (Pop), Rothweiler (Pop.), Russell (Pop.), Rutledge (Pop.), Simmons (Dem.), Singleton (Pop.), Stevens (Pop.), Stoner (Pop.), Trueblood (Pop.), Turner (Pop.), Ward (Pop.), Wehrle (Pop.), Wellep (Dem.), Wright (Pop.), Speaker Street (Pop.).

Those not voting or absent were: Dalton, Gates, Marks, Maxwell, Richards, Stuart, Tapscott, Wallace.

The Veto Message in Full.

The veto message of Governor Leedy follows:

To the House of Representatives:

Gentlemen:—With, I trust, a proper appreciation of the importance of the problem involved any of my own responsibilities, I have given most serious and thoughtful consideration to senate bill No. 524, entitled, "An act concerning railroads and other common carriers, defining the powers and duties of the board of railroad commissioners, providing for the enforcement of the orders of said board, prescribing penalties for the violation of the provisions of this act, and repealing all acts and parts of acts in conflict herewith." and have exhausted the time allowed me under our laws in which to reach a conclusion. With some reluctance I feel compelled to direct your attention to certain deficiencies in this bill and to certain objections to it which arise.

First—The bill suggests no way by which an aggrieved shipper can secure practical relief.

Second—The penalties named are so hedged about that they will neither compel obedience to the terms of the law, nor enforce subjection to the orders of the commission.

Third—By its express terms the bill makes of the railroad commission a mere justice of the peace court from which litigants pass to the district court to begin anew the trial of their cause, but fails to give to this tribunal even the power to compel attendance and to enforce its decrees with which that less august functionary is gifted.

Fourth—Offering the shipper no defensible advantage that is not his under the present legislation and securing to him no means of redress that is not his already by virtue of the ancient principles of the common law, this bill actually circumscribes the rights that he would have under the common law, in that it induces him to a struggle before the railroad commission, which only lands him in the district court in no better position than that of his contemporary who begins his action there without reference to this statute, but who has not lost the time consumed before the commission.

Fifth—The bill itself offers opportunity and suggestion for such an infinite array of technical legal complications, that it is difficult to see how anything can be definitely accomplished under its provisions.

Sixth—An attempt on the part of the railroad commission to go into court and enforce there their recommendations would involve the expenditure of large sums of money for which this legislature has made no appropriation and without which the bill would be wholly ineffectual leaving the commissioners with neither power to give effect to their opinions, nor to have them heard in the court of justice which can force its decrees.

First—The bill suggests no way by which an aggrieved shipper can secure practical relief.

Section 19 provides that the railroad shall be liable to the shipper who has a grievance "for three times the amount of damages sustained in consequence of any such violation of the provisions of this act, together with the costs of suit and a reasonable attorney's fee." However, very few shippers will suffer over-charges large enough to warrant them in risking the consequences of a suit at law with the great array of costs that would be taxed to the plaintiff if he lost. Each would suffer in silence because he feared to take up a fight when he felt that the state ought to protect him, not only from the wrong, but from the necessity of defending himself against it. Section 11 still permits to him the old common law privilege of bringing suit if the common carrier has wronged him, a privilege which he has at present. Under section 15, he can complain to the board of railroad commissioners, and if he is able in what amounts to a law suit to establish the justice of his position, the commissioners will give him a ruling in his favor, which amounts to prima facie evidence with which he can go into the district court and begin a law suit and cast the burden of proof upon the railroad company. I am unable to discern what advance this is over the present statute, or that the mere shifting of the burden of proof is worth the delay required and the preliminary struggle demanded. Under section 16, he may induce the commissioners to notify the railroad company to discontinue the overcharge and to make reparation to the shipper—a very lady-like remedy indeed.

Section 18 gives the shipper who has been over charged the right to make a complaint and secure a recommendation which, like the one before mentioned, is prima facie evidence in any law suit which he chooses to bring and entitles him to have the commissioners go before the supreme court and secure a mandamus to compel obedience to this order, with the long delays and the serious expenses involved, all to secure the return of a few dollars, which is as much as nine hundred and ninety-nine shippers out of a thousand ever suffer. The commonwealth should be able to offer to the citizens a better protection against what he justly or unjustly regards as the imposition practiced upon him by the powerful corporations which the commonwealth itself brought into life and permitted to secure control of all its great avenues of commerce and traffic, than the mere right to go before a court of commission to battle with this powerful opponent, a privilege for which he is under no obligations to any legislature, but which has been handed down to him from his ancestors for untold generations.

Second—The penalties named are so hedged about that they will neither compel obedience to the terms of the law nor enforce subjection to the orders of the commissioner.

The penalty named in section 5 applies only to passenger traffic. Several sections prohibiting acts of discrimination or other unjust acts are absolutely without penalties for the enforcement of their provisions. Sections 6, 7, 8 and 9 are examples; sections 25 and 26 impose penalties for extortion and unjust discriminations, but section 8, which prohibits pooling agreements, and section 9, which requires the posting of schedules of rates, can by no possibility be brought within the penal term of either section 25 or 26, because pooling arrangements and failure to publish schedules are neither "extortions" nor "unjust discriminations." Section 5 prohibits a discrimination in charges for transportation of persons and property, but it imposes a criminal penalty for its violation as to passenger rates only, and leaves the injured shipper to the poor remedy of suing in the courts to receive the excess he was compelled to pay. Sections 12 and 17 declare penalties in terms sufficiently broad, perhaps, to apply to all violations of the act. But a peculiarity of section 12, and probably of 17, in that such penalties are not to be visited upon the offending railroad corporations, but upon its officers, receivers, or agents, personally. The injustice of this is manifest. Why should these penalties be imposed upon the individual and not upon the corporation in whose interest the offense is committed? Why should the corporation be allowed to go free and its station agent, conductor, or other servant suffer the consequences of an offense which the corporation has commanded him to perform? It is no answer to this to say that the imposition of these penalties upon these officers and agents will be sufficient to insure compliance with the law. Experience has demonstrated that in legal trials under such laws, the offense can never be traced to the offender. A striking illustration of this has recently occurred. One of the great railroads of this country and of this state, the Santa Fe, paid out in the course of about two years, between seven and eight millions of dollars in rebates to favored shippers. The facts were brought to light by an expert accountant at the time the road went into the hands of the receivers. No denial of the fact was made by the company's officers, but, on the contrary, they frankly admitted the occurrence of the offense. The president of the company, Mr. Reinhart, and some of the subordinate officers were indicted in the United States court for a violation of the interstate commerce law, but, upon trial, which recently occurred in the city of Chicago, it was impossible to trace the offense or any konweldge of its commission to any of the accused parties, and in consequence, all were acquitted.

Section 12, and especially 17, before referred to, would likewise seem to be nugatory in respect to their penal provisions, because the proceeds of the fines thereby imposed are not directed to be credited to the school fund, as the constitution of the state requires. In the case of the A., T. & S. F. Ry. Co. vs the state, 22 Kansas, a law imposing a penalty upon railroad companies for failure to sound signals at highway crossings, one-half of which penalty was to be paid to the informer, was held to be in violation of section 6 of article 6 of the constitution which declares that "the proceeds of fines for any breach of the penal laws shall be exclusively applied in the several counties in which the money is paid, or fines collected, to the support of common schools." Some of the penalties declared in the bill under consideration are imposed as punishment for contempt of the courts. This may raise a possible question as to whether they are "penal statutes," strictly so called, but the better opinion would seem to be that they are, if so, attempting, as they do, to divert the fines assessed thereunder from the school fund to other funds, and particularly to the state treasury, rather than to the treasury of the county in which they are collected, they are clearly violative of the constitutional provision in question, and furnish no safeguard against the commission of the prohibited acts.

Section 23 creates an offense called "extortion," which is defined as the charging, collecting, demanding, or receiving more than a fair and reasonable rate of toll or compensation for the transportation of passengers, or freight of any description, or for the use and transportation of any railroad car, or the making of any unjust and unreasonable charge prohibited by this act. Sections 25 and 26 impose a fine of from one to five thousand dollars or a forfeit of a similar amount for "extortion or the making of any unjust discrimination as to passengers or freight rates for the use and transportation of railroad cars or in receiving, hauling, or delivering freight." An attempt to punish for this offense would require proof that the charge made was unjust and unreasonable, which involves the whole issue and would require not only the evidence, but a judicial interpretation of what is unjust and unreasonable as well as a judicial interpretation of the somewhat involved language used in these phrases. These fines and forfeits are probably open to the same objection, that they are in conflict with the constitutional provision which requires all such sums to go into the school fund. It is very doubtful if any penalty declared by this bill will stand the test of judicial interpretation and be enforced by the court. The powers definitely granted the commission are so infinitesimal that even if the penalties were sufficiently severe and sufficiently settled, there is very little authority to be disobeyed for which any penalty could be inflicted.

3. By its express terms the bill makes of the railroad commission a mere justice of the peace court, from which litigants pass to the district court, to begin anew the trial of their cause, but fails to give to this tribunal even the power to compel attendance and to enforce its decrees with which that less august functionary is gifted.

Section 24 provides that either the railroad company or the complainant may, if dissatisfied with the decision, order or recommendation of the board of railroad commissioners, "appeal therefrom to the district court in the same manner as appeals are allowed from judgments of justices of the peace." If the party appealing gives a bond to pay all the costs in the case it "shall operate as a supersedeas." It is prescribed that this action "shall be tried and determined as other civil causes in said court and shall be subject to the same procedure by writs of error as other civil actions." To state this in more familiar language, the cause may be appealed from a board of railroad commissioners to the district court and the whole trial shall be begun again, so that the time consumed before the commission is simply wasted. A justice of the peace may compel the attendance of witnesses at his court, but the railroad commissioners are powerless to do this and are forced to go into some other court and beseech its assistance to bring before this commission the meekest citizen whose attendance and information they may desire, and this power can only be invoked when court is in session. Consequently, the railroad commission itself would be compelled to await the beginning of a term of court in order to get power from the court to compel witnesses to attend at sittings. To compel a commission that is created for the purpose of controlling and regulating the greatest corporations in the state to adjust their proceedings and regulate their sittings to the terms of the district courts in order to secure the attendance of witnesses and the production of documents, places them in a position so abject as to seem almost ridiculous. The power and the dignity of this commission should be commensurate with the vast responsibilities which it is intended should devolve upon it. This commission should certainly be granted at least as great powers as are given a justice of the peace, and I know of no reason why a district court should be empowered to review their every decision before it becomes of any force.

Fourth—Offering the shipper no defensible advantage that is not his under the present legislation and securing to him no means of redress that is no this already by virtue of the ancient principles of the common law, this bill actually circumscribes the rights that he would have under the common law, in that it induces him to a struggle before the railroad commission, which only lands him in the district court in no better position than that of his contemporary who begins his action there without reference to the statute, but who has not lost the time consumed before the commission.

This commission is so utterly impotent that the provisions in this bill against discrimination supported as they are by no penalty that is sure of enforcement, offer the shippers no advantage over present legislation that he can hope to maintain against the legal technicalities of which corporations would avail themselves. The only means of redress that this bill secures him is an opportunity to go before court of commission and prove that he has been robbed. This right, the common law which he inherited from his fathers and which is still the law of Kansas except when a statute takes its place, is amply secured to him. If he goes into court and begins an action under his old common law right, he saves the time which another complainant spends before this commission only to find himself by appeal of the corporation in the district court a few months behind his common law brother and with no start there which the other man had not enjoyed.

5. The bill itself offers opportunity and suggestion for such an infinite array of technical legal complications that it is difficult to see how anything can be definitely accomplished under its provisions.

Section 1 provides for the removal of the commissioners "in the same manner as provided for the removal of other state officers." State officers, in the common acceptation, are the executive and perhaps some of the judicial officers of the state provided for by the constitution. These officers, under sections 27 and 28 of article 2 of the constitution, are removable upon articles of impeachment preferred by the house of representatives, and tried by the senate. This remedy is not sufficiently summary for the removal of subordinate officers of the executive department; and for unfaithfulness in the discharge of their duties, the people should not be compelled to resort to the slow and cumbrous methods of constitutional impeachment. If by "state officers," as used in this section, is meant the appointive members of the state administration, the section in question is impossible of application, because there are several different ways provided by statute for the removal of different classes of such officers, and it specifies none as the procedure to be adopted.

Section 5 prohibits discrimination between persons "for like and contemporaneous services in the transporation of like kinds of traffic." The portion of such section in which this language is found is evidently borrowed from section 2 of the interstate commerce act of congress. I do not understand that it has ever received judicial construction, or construction by the interstate commerce commissioners, and its meaning is too indefinite to be readily comprehended. What if "contemporaneous service" performed by two or more persons? Does it mean service performed upon the same train, or the same day, or the same week, or month? The ordinary signification of the word "contemporaneous" is, "occurring at the same time." If this section only prohibits discrimination between persons for services occurring at the same time, its provisions are utterly valueless. It is no advantage to shippers if a rate can be charged to a particular person one day, and a different rate to another person the succeeding day, or week, for the company can shelter itself behind the pretext that the services in the two instances were not contemporaneous.

Section 5 is identical in language with section 2 of the interstate commerce act as far down as including the words "like and contemporaneous service in the transportation in like kinds of traffic;" but section 2 of the interstate commerce act goes on with the words, "under substantially similar circumstances and conditions." These words fortify and explain the ambiguous words, "like and contemporaneous service," and there have been ample interpretations of the paragraph so reading, but all these decisions seem to be based upon the words, "substantially similar circumstances and conditions." It is a great misfortune that for some occult reason these words, which would have brought to this bill a by no means inconsiderable array of judicial interpretations, are omitted, leaving the paragraph without judicial interpretation and leaving all litigants in absolute ignorance of just what this ambiguous phrase does mean.

Section 20 provides that after hearing and investigation upon complaint as to unjust rates from and to certain points, the commissioners shall decide upon such complaint, and declare the rate to be charged for service in question; and further provides that such decision shall not be limited to the specific case complained of, but shall be extended to all rates between points in the state. This section is difficult of construction. If it means that the rate so declared upon investigation of a matter between an individual shipper and a particular company, and as to the rate from and to a certain points, shall govern as to all shippers and all other companies, and to and from all other points, it would seem impossible of application because of the widely varying circumstances, conditions, and distances involved, and would be, without any question, violative of the fundamental, constitutional principle that every person, before the legal determination of his rights, shall have his day in court and a chance to be heard. How is it possible to bind one railroad company and individual shipper over its line, by a decision made in a controversy between another railroad company and an individual shipper over its line? And how is it possible, upon the same principle, to bind the same company and another shipper at another point on its line, by a decision in a case and concerning a matter in which their rights were not drawn in controversy? No question, perhaps, can be raised as to the right of a board of railroad commissioners to declare a schedule of rates in the making of which all companies, persons, and localities have had a right to be heard, but to make a judgment rendered in one man's and one company's controversy, conclusive upon all companies and all parties is a legal impossibility. Perhaps a fair construction of section 20 will limit its application in the making of rates by the commissioners to the particular company in question; if so, the practical difficulties are lessened only in number but not in degree. The section seems to make the rate established upon complaint of an individual shipper apply to all points in the state on the line of the particular road. Waiving the injustice of such a measure and the legal objections to doing so without a hearing by the interested company as to all these other points, does this section mean that the rate so fixed shall determine rates at all other points in respect to all other commodities, or only in respect to the particular commodity involved in the complaint? If in respect to all commodities, it requires the performance of impossibilities and absurdities. How can a rate on a particular article, for instance, cattle, from and to certain points be used as a basis for rates upon all of the other commodities, hundreds, possibly thousands in number, from and to all points on the line in question? If an adjudication under this section does not establish a basing rate for all articles of shipment to and from all points on the line of the particular road, there must then be a separate complaint in respect to the charges for the transportation of all the different articles of traffic before a general freight schedule could be established by this piecemeal kind of work, and if so the present memoration will have ceased to have interest in the subject of railroad transportation before the schedule is complete. This section, which is the only one conferring power in express terms upon the commissioners to establish rates, it must be admitted is of no practical value.

It may, however, be claimed, that under sections 17 and 20 inclusive, power is vested in the board of railroad commissioners to make general schedules of rates applicable throughout the state, and that under the proceedings therein outlined an appeal from such determination of the commissioner will lie to cort. A critical examination of these sections may leave this question in doubt. The most that can be said is that it is doubtful, with the better view inclining against the possession of such power by the commissioners. A power so important and necessary to the regulation of the transportation companies and the protection of the rights of the public should not be left to strained and technical niceties of construction, but should stand out in the body of the law so plain that every one who reads may understand and know. That the legislature did not intend this bill to confer power on the commissioners to establish general schedules or rates, and, furthermore, did not intend to vest such power in the commissioners, is clearly evidenced by the fact that propositions, in both houses, to confer such power were defeated.

I notice that while section 17 makes it a "duty" of the commissioners to apply to the district court for process to compel obedience to their recommendations, section 18 requires them to go to the supreme court for this order. Here again a judicial interpretation would be necessary. While section 5 again attempts to establish an anti-pass regulation, it does so in apparent obliviousness of the title of the bill, and is, in any event, so qualified by section 28, which permits the issuance of mileage, excursion or commutation passenger tickets, that it is probably of no practical value whatever if there should be any disposition to evade its terms. There is about this bill a general air of indefiniteness and uncertainty discernible to the most casual inspection, which seems to me to be open to a vast array of legal technical objections. With such a future before it, it is almost impossible to hope that any enforcement of its provisions can be had which would be of any real or practical value to those who complain of the charges and the methods of the great railroad corporations.

Perhaps the greatest objection that has been urged against more effective legislation has been the idea that the supreme court of the United States has decided that the legislatures of states were not empowered to fix maximum rates. This impression has been most assiduously disseminated by the salaried representatives of corporate interests. It is, however, incorrect. The whole drift of the law declares that the legislatures are entitled to fix maximum rates for common carriers. This theory takes its rise in the earliest history of our common law jurisprudence and is extended to the present day. The supreme court of the United States itself has upheld nearly every effort of a state to fix the maximum rates, not only upon common carriers, but upon things which seem to be of less public nature, including even grain warehouses. Two hundred and fifty years ago Lord Chief Justice Hale declared that when private property is affected with a public interest it ceases to be entitled to the peculiar privileges of private property, and he further declared that the government has control of wharves, ferries and other forms of property which the owner places at the disposal of the public for hire. In the case of Munn vs. Illinois, 94 U. S. Rep., page 126, the supreme court of the United States says that this "has been accepted without objection as an essential element in the law of property ever since." During the reign of William and Mary, the parliament of England enacted a statute regulating the charges of common carriers.

In case of Providence bank vs. Billings & Pitman, 4 Peters, 562, Chief Justice John Marshall said, in reading the decision of the supreme court, speaking of the legislative power of each state: "This vital power may be abused, but the constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the state governments. The interest, wisdom and justice of the representative body and its relations with its constituents furnish the only security where there is no express contract against unjust and excessive taxation as well as against unwise legislation generally." In Railroad Company vs. Maryland, 21 Wallace, 470, the supreme court of the United States said, in speaking of the first days of the republic: "No one at this day imagined that the roads and bridges of the country were not entirely subject both as to their construction, repair and management, to state regulation and control. They were all made either by the states or under their authority. The power of the state to impose or authorize such tolls as it saw fit was unquestioned, and when in process of time canals were constructed, no amount of tolls which was exacted thereon by the state or the companies that owned them, was never regarded as an infringement of the constitution. So when by the improvements and discoveries of mechanical science, railroads came to be built and furnished with all the apparatus of rapid and absorbing transportation, no one imagined that the state, if itself owner of the work, might not exact any amount whatever of tolls or fare or freight, or authorize its citizens or corporations, if owners, to do the same. These are positions which must be conceded; no one has ever doubted them. This unlimited right of the state to charge or to authorize to charge toll, freight or fare for transportation on its roads, canals and railroads, arises from the simple fact that they are its own works, are constructed under its authority. It gives them being. It has a discretion as to the amount of that compensation. That discretion is a legislative—a sovereign—discretion, and in its very nature is unrestricted and uncontrolled. The security of the public against any abuse of this discretion resides in the responsibility to the public of those who for the time being are duly invested with it. In this respect it is like all other legislative power when not controlled by specific constitutional provisions and the courts cannot presume that it will be exercised detrimentally. The state could have built the road itself and charged any rates it chose. How does the case differ in a constitutional point of view when it authorized its private citizens to build the road? In our judgment there is no solid distinction. It is simply the exercise by the state of absolute control over its own property and prerogatives." This decision was rendered in 1874. About this time the abuses of the public by railroad monopolies attracted so much attention that many states began to legislate on the question, and a series of cases known as the Granger cases reached the United States supreme court in 1876.

In every instance, without exception, the supreme court affirmed the right of the state to fix a maximum rate on common carriers. These decisions include in their scope the laws of the states of Iowa, Wisconsin, Minnesota and Illinois. In the case of Munn vs. Illinois, the supreme court affirms the right of the legislature of Illinois to fix a maximum rate to be charged for storage for grain in warehouses. The court said: "Of the propriety of legislative power the legislature is the exclusive judge. It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though though it be clothed with a public interest, and that what is reasonable is a judicial, and not a legislative, question. As has already been shown, the practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps, more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. Undoubtedly in mere private contracts relating to matters in which the public has no interest, what is reasonable must be ascertained judicially, but this is because the legislature has no control over such a contract. So, too, in matters which do affect the public interest and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable. The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charges as one of the means of regulation is implied. We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by the legislature, the people must resort to the polls; not to the courts." In the Wisconsin case, before mentioned, the supreme court said in its decision: "As to the claim that the courts must decide what is reasonable, and not the legislature, that is not new to this case. It has been fully considered in Munn vs. Illinois. Where property has been clothed with a public interest, the legislature may fix a limit to that which shall in law be reasonable for its use. This limit binds the courts as well as the people. If it has been improperly fixed, the legislature, not the courts, must be appealed to for the change."

The case of Ruggles vs. Illinois, found in the 108 U. S. Rep., "leaves the legislature to fix the maximum of what would be reasonable." In Stone vs. the Farmers' Loan and Trust Company, 116 U. S. 307, the supreme court maintains the commission established by the state of Mississippi; in Dow vs. Breidelman, 125 U. S. 680, the supreme court sustains the maximum passenger rate established by the state of Arkansas; in the Georgia Railroad and Banking Company vs. Smith, 128 U. S. 174, the supreme court sustains the railroad commission established by the state of Georgia in their attempt to control the freight and passenger rates of Georgia railroads. Although the well known Minnesota case seemed to reverse this principle in a measure in Budd vs. New York, 143 U. S. 528, the supreme court pointed out that the decision "had reference only to the case then before the court, and the charges fixed by a commission appointed under an act of the legislature under a constitution which provided that all corporations being common carriers, shall be bound to carry on "equal and reasonable terms" and under a statute which provided that all charges made by a common carrier for the transportation of passengers or property, should be "equal and reasonable." What was said in that opinion as to the question of the reasonableness of the rate of charge being one for judicial investigation, had no reference to the case where the rates are prescribed directly by the legislature, says the supreme court. In this decision of Budd vs. New York, the court distinctly reaffirms the original proposition that the legislature can fix a maximum rate. In Brass vs. North Dakota, 153 U. S. 391, the supreme court again affirms the right of the state to fix a maximum rate. This was in 1893. Even in the Arkansas case, found in the 156 U. S., page 649, the United States supreme court upheld the legislature. In the Texas case, found in 154 U. S., Regan vs. the Farmers' Loan and Trust Company, there were, as in the Minnesota case, certain statutory provisions local to that state. With the exception of a few isolated cases, in which some special local reason for their exception is discovered, the entire line of judicial interpretation has established the principle that the legislature alone is the sole judge of what is a reasonable maximum rate for a common carrier to assess against his customers. There have been any exceptions in the last ten years, and all of them have been in the last ten years, simply show the influence which great corporations have managed to wield upon a supreme court packed by corporation lawyers. When this bench shall renew in the public mind the respect and admiration which it enjoyed in the days of John Marshall and the great men who followed him, there will be a return to the time honored principles which made the legislature, and not the courts, the judges of what is reasonable. Meanwhile, all that is necessary is to avoid the confiscation of property, to make a rate that is reasonable, and that is all any can ask, and "there is no power in Venice to alter an established decree." For two hundred and fifty years, in England and in this country, the decisions of the courts have uniformly been that the regulation of tolls for highways, ferries, warehouses, and wharves, and common carriers, was a legislative and not a judicial function, and there is no intimation in any decision of the supreme court of the United States, down to the year 1885, that the courts dreamed that they had any power to interfere. Up to that time it was uniformly held that the regulation of common carriers was a matter wholly within the province of the legislature, and if injustice were done to any party, an appeal must be to a subsequent legislature and not to the courts. In 1885, in passing upon the case of Stone vs. the Farmers' Loan and Trust Company, the supreme court gave the first intimation that the court had changed from on that proposition, and in the various decisions from that time on down to this they have steadily and in every case gone a little bit further in declaring their rights to jurisdiction in this matter; but twelve years of usurpation compared with 250 years of justice is a small matter and the signs of the times are, that by the time a suit starts now in pursuance of a maximum rate passed by the legislature, should not get to the court of final jurisdiction, the judges of our highest courts who now usurp authority not granted to them by the constitution or by the laws, will be driven from their positions by the people, and their silken robes of justice be placed upon the backs of honest men.

However, the supreme court of the United States has not yet said that the legislature has not the right to make a maximum rate, but has affirmed that proposition, and so far has only said that the rates made must be reasonable, and that the court, and not the legislature or a subsequent one, is to be the judge of what is reasonable. Therefore, it seems to me, in view of these decisions, that, first, the legislature should make a schedule of rates itself, then there would be no question as to delegated powers; but, if the legislature in its wisdom sees fit to delegate powers to a commission, that commission should be given large judicial powers, not for the purpose of hearing one complaint—we already have courts for that—but for the purpose of compelling obedience to its orders and to prevent it from being hampered and interfered with by the inferior courts of this state.

The commission should be empowered to make rates upon a hearing, the date of which should be fixed by the statute, or notice of which should be given by the commission. In this way it avoids the legal technicalities of court procedure and becomes a representative of the legislature and not an adjunct of the courts. Such a commission with the power, I believe, would have the power and the right to make a schedule of rates for the entire state as if the legislature itself had done so.

Every man is the custodian of his own conscience and of his own alone. As I accord that privilege to others, I retain it for myself. In view of the pledges I made to the people who placed me in office, that I would do all in my power to protect them from exorbitant rates, I feel impelled to make these suggestions.

In conclusion let me say that after serious reflection, I feel compelled to veto this bill and return it to you without my signature for such action as the legislature may deem proper.

J. W. LEEDY, Governor.

TRUST INVESTIGATION REPORT.

New York Legislative Committee Suggests How Existing Evils May Be Remedied.

Albany, N. Y., March 9.—The report of the joint committee on trusts which held several sessions in New York city last month was submitted to the legislature to-day. It notes the fact that a decision of Judge Swayne on the federal constitution forbids action on the part of individual states to repress trusts, but the committee expresses the belief that the attorney general can, by bringing action before a supreme court judge, in some respects remedy existing evils. A bill which accompanies the report grants immunity for witnesses who incriminate themselves and gives the supreme court subpoena power. A bill may be introduced to stop the factor system as it is now used in the sugar trust. Senator McCarren filed a minority report exonerating the sugar trust and saying that it has made possible lower prices for the commodity.

Woman's Nerves.

Mrs. Platt Talks About Hysteria.

When a nerve or a set of nerves supplying any organ in the body with its due nutriment grows weak, that organ languishes.

When the nerves become exhausted and die, so to speak, the organ falls into decay. What is to be done? The answer is, do not allow the weakness to progress; stop the deteriorating process at once!

Do you experience fits of depression, alternating with restlessness? Are your spirits easily affected, so that one moment you laugh and the next fall into convulsive weeping?

Again, do you feel something like a ball rising in your throat and threatening to choke you, all the senses perverted, morbidly sensitive to light and sound, pain in ovary, and pain especially between the shoulders, sometimes loss of voice and nervous dyspepsia? If so, you are hysterical, your uterine nerves are at fault. You must do something to restore their tone.

Nothing is better for the purpose than Lydia E. Pinkham's Vegetable Compound; it will work a cure. If you do not understand your symptoms, write to Mrs. Pinkham, Lynn, Mass., and she will give you honest, expert advice, free of charge.

MRS. LEVI F. PLATT, Womleysburg, Pa., had a terrible experience with the illness we have just described. Here is her own description of her sufferings:

"I thought I could not be so benefited by anything and keep it to myself. I had hysteria (caused by womb trouble) in its worst form. I was awfully nervous, low-spirited and melancholy, and everything imaginable.

"The moment I was alone I would cry from hour to hour; I did not care whether I lived or died. I told my husband I believed Lydia E. Pinkham's Vegetable Compound would do me good. I took it and am now well and strong, and getting stouter. I have more color in my face than I have had for a year and a half. Please accept my thanks. I hope all who read this and who suffer from nervousness of this kind will do as I have done and be cured."

Wrenched His Back

And Hurt Himself Internally

Rheumatism and Creeping Paralysis Followed, and Mr. Salsbury Suffered for a Long Time—Relief Came at Last in the Use of Pink Pills.

From the Times, Erie, Pa.

On a bright September morning a reporter of the Erie Daily Times drove up to the cozy residence of Luther Salsbury, about three miles from East Springfield, Pa., and one half mile from Sherman Corners. Mr. Salsbury was at home and graciously received the reporter, led him to a cozy sitting room, and begged him to be seated. Mr. Salsbury is 64 years of age, with long, snowy white beard, and steady walk. He was born in Conneaut township, about nine miles from where he now resides, and is one of the best known farmers in that section of the country. At the age of 21 he moved to Indiana with his parents.

Mr. Salsbury was always a very healthy man, and never knew what it was to be sick. After living in Indiana about fifteen years, he, with his aged mother, moved back to their former home. About seven years ago Mrs. Salsbury had the misfortune to fall and break her hip. Luther, who witnessed the fall from the porch, ran to her assistance, and lifting her gently carried her to the house. In some manner he wrenched his back, and hurt himself internally, causing rheumatism to set in. He did not pay any attention to it until about six months afterwards, when he noticed a peculiar feeling between his shoulders, and the shoulder blades became very numb. He went to see a physician and was informed he had what is known as creeping paralysis. He doctored about two years and was pronounced cured.

About a year after he quit doctoring, the same feeling came over him again, and he made up his mind not to see a doctor, but try to cure himself. Mr. Salsbury was always fond of fishing, and while on the way to his favorite pond he noticed a newspaper lying on the ground. He picked it up, and his eye accidentally read an article which said, Use "Pink Pills" for rheumatism, impoverishment of the blood, etc. "I began thinking that they might do me good," said Mr. Salsbury, "and accordingly I went to Dr. Davenport's drug store at Albion, Pa., six miles from my home, and purchased three boxes. Twenty-four hours after taking the first pill I could feel the effect clear to the ends of my fingers and relief came at once.

"I continued using Pink Pills and began getting stronger, and to-day I am feeling very well. My backache does not bother me at all, and I can walk as good as any one of my age. The numbness has disappeared entirely. Before taking Pink Pills I was unable to do the work on my farm, but now I can handle the farm as well as I ever could, and I attribute it all to the use of Dr. Williams' Pink Pills.

"Without hesitancy I recommend Pink Pills for rheumatism and all diseases of the blood. The pills are the best I have ever known, and a number of people who noticed my condition were surprised at the effect of Pink Pills. Too much cannot be said of them."

Dr. Williams' Pink Pills contain, in a condensed form, all the elements necessary to give new life and richness to the blood and restore shattered nerves. They are also a specific for troubles peculiar to females, such as suppressions, irregularities and all forms of weakness. In men they effect a radical cure in all cases arising from mental worry, overwork or excesses of whatever nature. Pink Pills are sold in boxes (never in loose bulk) at 50 cents a box or six boxes for $2.50, and may be had of all druggists, or direct by mail from Dr. Williams' Medicine Company, Schenectady, N. Y.

A BOARD OF TRADE ENJOINED

HAD THREATENED TO PREVENT ITS QUOTATIONS BEING SENT OUT.

Western Union Telegraph Company Restrained From Refusing to Deliver Chicago Board of Trade Quotations.

A temporary injunction was granted by Judge Gates in the circuit court restraining the Western Union Telegraph Company from refusing to deliver the quotations of the Chicago board of trade to the W. A. Michael Commission Company of this city. The Chicago board of trade was also enjoined from refusing to deliver the quotations to the telegraph company for transmission.

The board of trade of Chicago has threatened to debar the telegraph company from the privileges of the floor of its exchange for the purpose of preventing it from sending out its quotations, unless it will agree to deliver the quotations to only members of the board of trade or to the patrons of the members. The petition sets out that the Chicago board of trade was established in 1859 by a special act of the Illinois legislature and that it now has 2,000 members, each of whom pays a membership fee of $10,000 a year. The board of trade's members act as brokers and commission merchants to handle the immense output of grain and provisions and their prices are taken and accepted by the outside world as the market values of goods in Chicago. The plaintiff has heretofore recognized the fact that the public was interested in its transactions by allowing different telegraph companies to place men on its floor and send out information. The entire West depended on this information and it was public property and could not be curtailed or controlled or stopped by any set of men.

A similar suit was begun in Chicago a few days ago and an injunction was granted there.

DIVORCE BY PROXY.

The Defendant, a Minor, Was Represented by a Guardian Chosen for the Case.

Judge Slover held a short session of the circuit court in Independence yesterday. Court was open for the filing of papers, jury cases being docketed for Thursday.

The divorce case of Mary B. Armitage against Charles E. Armitage, for desertion, was tried. A peculiarity appeared, owing to the fact that the defendant was a minor at the time of the filing of the divorce proceedings, January 16, 1892. The case has been delayed in the courts for some time, owing to the question as to the legality of appointing a guardian for the defendant husband. When Armitage married his wife he was a minor, and had to obtain the consent of his parents before the ceremony. When Mrs. Armitage found herself deserted by her youthful husband she found that getting married by consent of her husband's guardian was much easier than to bring divorce proceedings against him in the capacity of a minor.

The marriage relation had not, it seems, brought him to the age of responsibility. Owing to this unusual situation, the lawyers devoted considerable time in looking up the point, and finally decided that Armitage being a minor at the time of the filing of the papers it was proper to appoint a guardian for him, and get a divorce by proxy, as it were.

J. E. Latham was appointed guardian for Armitage, and the proceedings were heard with the result that Mrs. Armitage was forever freed from the duty of taking care of her minor husband. While Latham was being sued by proxy for divorce, he only figured in the case as such, and had no defense to put up why the divorce should not be granted.

A plea of abatement was filed in the suit of C. A. Bishop against G. Bartholomew, which gave notice that the defendant intended to fight the attachment proceedings brought by Bishop. In the divorce proceedings of L. H. Bell against his wife, Hannah Bell, the latter filed a motion for alimony yesterday, pending suit.

A JUSTICE'S SLAM AT KANSAS.

Because a Man Is Going to Live in Kansas Justice Walls Reduces His Jail Sentence.

When Justice Walls sentenced John Soulsbery to jail yesterday for stealing a piece of harness from R. Davis, on lower Grand avenue, he incidentally expressed his feelings for a citizen of Kansas. Davis failed to appear to prosecute the case when it was called, but Soulsbery pleaded guilty. "Judge, I will plead guilty. I took the piece of harness and Davis could prove it if he were here. Now I am going to Kansas as soon as I can, to work on a farm, and I would like to begin my sentence with-out any delay."

Justice Walls gazed upon the man with a touching look of sympathy. "Soulsbery," said the justice, "by rights you should not be sentenced to jail at all if you are going to Kansas to work. That in itself should be punishment enough for almost any offense."

Then he let the man off with five days.

Estate of the Late Thomas G. Conklin.

F. J. Seehorn, as public administrator, yesterday took possession of the estate of the late Thomas G. Conklin, who was superintendent of the local Pinkerton detective agency and committed suicide in his office. The estate includes $2,000 life insurance, which will be collected and turned over to the widow of the late superintendent.

Will of the Late W. C. Campbell.

The will of the late William C. Campbell, of Clay county, was yesterday filed for probate. To his widow, Amanda Campbell, is left eighty acres of Clay county land.

OPPOSED TO PROF. BUCHANAN.

A New York Publication Says That City's Principals Should Not Be Selected Outside New York City.

Secretary Benson, of the board of education, has received this month's publication of the "School," a paper published in the interests of the New York public schools. A great part of the paper is devoted to the proposed high schools in New York city. Both editorially and in the news columns this new feature of the public school system of that city is discussed at length. In the course of an article on the selection of instructors for the three proposed schools is the following:

"It is expected that a report on the curriculum of the schools will be decided on, and reported this month by the committee of the board of superintendents, Dr. Marble and Assistant Superintendent Davis, while in Indianapolis last week, were authorized by the board to make a careful examination and report on high schools in the West. They went to see that in Kansas City, of which Dr. Buchanan is principal, and which has a wide reputation for its management."

Under another head appears an account of the bitter fight which is being made against the appointment of any principal outside of New York city. Editorially, the paper advocates the selection of the principals for the new high schools, "from residents of Greater New York," on the ground that they would be more familiar with the New York system of education. Professor Buchanan's friends still have hopes that he may be chosen to a principalship in the New York schools.

In Despair.

If you are in despair from loss of vitality, weakness and nervous prostration and you have no interest in life, write to Dr. Greene, 35 West 14th St., New York city, and all you have lost will be restored. Dr. Greene is the most eminent specialist of his time, the most successful physician to-day. His cures are wonderful and unequaled by any other physician. You can consult him personally or by letter, free. If you are sick from overwork, errors, indiscretions or any cause, write to Dr. Greene and ask his advice. He will cure you.

CHEAP GAS IN BELFAST.

City Made a Large Profit in Furnishing It at 60 Cents Per 1,000 Feet.

Washington, March 8.—The city of Belfast, Ireland, has been making a large profit on the gas works controlled by it. Last year's profit was £67,377. It has been decided to lower the cost to consumers, although the present price is ridiculously low, according to American standards. Hereafter gas will be sold for 60 cents per 1,000 feet instead of 66 cents, and there will be a discount of from 5 per cent to 20 per cent, dependent upon the amount consumed; all this, too, with coal at $3.09 per ton. United States Consul Taney, at Belfast, has supplied the department of state with a full statement of the cost of producing Belfast's gas, regarding the subject as interesting to American consumers just now.

Great Hotel of New York.

The Plaza, pioneer of the uptown center, maintains its lead as giving best value for the price; European and American plans; Fifth avenue and Plaza square; quick access to all parts of the city by elevated and surface routes.

Tax on Commercial Travelers.

Washington, March 9.—The Norwegian government has imposed a tax on foreign commercial travelers amounting to 100 kroners ($23.80) for each calendar month during which they remain in Norway. The same tax is imposed in Sweden and strong protests are being made by the French and German newspapers.

Omaha Stock Yards Bill.

Lincoln, Neb., March 9.—(Special.) The senate passed the stock yards bill practically unchanged, to-day by a vote of 25 to 7. It is so radical that it is estimated it will reduce the earnings of the South Omaha yards $80,000 per annum.

No Mexico Curfew Ordinance.

Mexico, Mo., March 9.—(Special.) By almost a unanimous vote Mexico's city council refused to pass the curfew ordinance. It passed an ordinance prohibiting the sale of cigarettes, but the youths get the cigarettes just the same.

Ironing is hard enough. Save your strength for that. Make the rest of the washing easy with **Pearline.** Soak; boil; rinse—that is all there is to it. The clothes are cleaner and whiter than in the old way; colored goods are brighter; flannels are softer and won't shrink.

Use your Pearline just as directed on every package, and you'll get the best results. Don't use more—that only wastes it; don't use less—that only increases your work. Use it alone; no soap with it; nothing but Pearline. 531

Millions NOW USE Pearline